

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEIONTOE ROOSEVELT HUTSON,

Defendant-Appellant.

UNPUBLISHED

October 6, 2005

No. 254188

Wayne Circuit Court

LC No. 03-004623-02

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant appeals his convictions of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was initially charged with first-degree murder, MCL 750.316, felon in possession of a firearm, and felony-firearm predicated on murder. At the preliminary examination, the district court concluded that there was insufficient evidence to proceed with the murder charge. The prosecutor orally requested the district court to bind defendant over on the remaining counts, specifying that felony-firearm would now be predicated on felon in possession of a firearm, and the district court agreed to do so. The "return" binding defendant over for trial specifies counts II and III only, those being felony-firearm and felon in possession of a firearm, and indicates that count I, first-degree murder, was dismissed.

An amended information was filed that replaced the dismissed charge of first-degree murder with second-degree murder, MCL 750.317, and reiterated the original charge of felon in possession of a firearm, and set forth charges of felony-firearm twice, the two respectively predicated on murder, as count II, and felon in possession of a firearm, as count IV.

When the trial court delivered its verdict and found defendant not guilty of second-degree murder, but guilty of felon in possession of a firearm and felony-firearm, the defense offered no challenge to the propriety of the trial court's passing judgment on the latter charge, though the trial court inquired if there were any other matters to discuss. Instead, defense counsel first raised his appeal issue at sentencing. The trial court decided to retain the felony-firearm conviction, stating as follows:

. . . Whether it's an amendment of Count 2, as perhaps, you know, [the district judge] thought he was doing and then moving it over, . . . it's pretty clear in the transcript that what he was binding [defendant] over on was not Felony Firearm as it related to murder but Felony Firearm as it related to [felon in possession] only, and then he subsequently bound him over. And basically all . . . we're arguing now is over . . . procedure semantics. . . .

But the bottom line is I found the defendant guilty of Felon in Possession and Felony Firearm as he had been bound over by [the district court] originally, not the murder charges.

Preservation requirements encourage parties to report errors as they discover them in order to give the trial court an opportunity to correct them. See *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). Here, the defense proceeded through and beyond the verdict without raising the record-keeping irregularities. To permit defendant to take advantage of this minor irregularity would endorse defendant's harboring error as an appellate parachute. *People v Roberson*, 167 Mich App 501, 517; 423 NW2d 245 (1988). Thus, we reject this claim on appeal.

Further, a defendant that asserts an unpreserved claim of error must show that the plain error affected substantial rights. And, we should reverse only when the defendant is actually innocent, or, the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Although the bindover returned to the circuit court was silent concerning the felony upon which felony-firearm was predicated, any ambiguity was resolved through the discussions on the record between the prosecutor and the district court, in the presence of defendant, at the preliminary examination.

Because the minor irregularity in issue neither resulted in the conviction of an innocent man, nor threw the integrity of the proceedings below into doubt, no appellate relief is warranted. *Carines, supra*.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane E. Markey